

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,)
)
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 Plaintiff,)
)
)
v.) No. 6:22-cr-03099-BP
)
)
JOHN FITZGERALD MULLINGS ,)
)
)
 Defendant.)

**DEFENDANT MULLINGS' REQUESTED VOIR
DIRE QUESTIONS**

Pursuant to FED. R. CRIM. P. 24(a), defendant, John Fitzgerald Mullings, respectfully requests the Court to include the following matters in its voir dire of the prospective jurors in the trial of this case. Defendant is requesting that the Court, in its questioning of the jury panel, not to limit its inquiry to only family members, but to also include friends and associates. In today's society our friends and associates often affect our beliefs, biases and opinions as much as, if not more so, than family members.

Defendant also requests the Court to instruct the panel members that if they feel any answers to the voir dire questions may prove to be embarrassing, and do not wish to answer in front of the entire panel, they may answer confidentially to the Court and the parties after the rest of the panel has been excused.

Background Questions

1. Each of you should state:
 - (a) your name
 - (b) where you live
 - (c) your marital status (whether married, single, widowed or divorced)
 - (d) your occupation (if retired, your previous occupation)
 - (e) your spouse's (or former spouse's) occupation (if retired, his/her previous occupation)
 - (f) the ages and occupations of your children
2. Have you ever served in the United States military? If so:
 - (a) what branch?
 - (b) when?
 - (c) rank?
 - (d) have you ever served on any military hearings?
3. Do you, or any member of your family or friends, know the Honorable M. Douglas Harpool, the presiding judge in this case?
4. Do you, or do any members of your family or friends, know the Assistant United States Attorney James Kelleher and Stephanie Wan, who will be prosecuting this case?
5. Do you, or do any members of your family or friends, know the defense attorney, Brady Musgrave?
6. Do you know or recognize any other prospective jury panelist in the courtroom? If so, what is the basis of the relationship? Would such a relationship or acquaintance influence your judgment in this case?

Bias

7. Do any of you feel that you possess any kind of personal prejudice with reference to this defendant or this case?
8. Anyone work with children in activities such as sports, church groups, scout leaders, etc. . . ?

9. Is anyone here or a close family member or friend associated in any way with any group or organization that supports victims of alleged abuse?

- (a) Defendant Mullings requests that individual in camera voir dire be conducted with respect to each individual prospective juror as to any possible racial prejudice. Defendant is African-American and southwest Missouri has a small percentage of prospective African-American veniremen. Thus, the customary general questioning of a jury panel in this instant in this instance would not be sufficient to elicit any answers which might cause even the most conscientious juror to reveal an existing prejudicial status.
- (b) Have you or anyone close to you ever been the victim of a crime committed by an African-American?
- (c) Have you ever had a disagreement with an African-American person, either at work or in a social setting?
- (d) Have you ever used derogatory racial terms in conversation with anyone, or in any way participated in the telling or listening of racially based jokes?
- (e) When you attended school, or in your workplaces past and present, what percentage of your peers were African-American?
- (f) Would you doubt the honesty of a person because he was an African-American?
- (g) Do you believe that African-Americans tend to commit more crimes than other people, or that African-Americans are more inclined to be involved in criminal activity?
- (h) Would you be able to fairly try this case on the basis of the evidence introduced and disregard the fact that the defendants are African-American?
- (i) If you were the African-American defendant in this case, would you feel comfortable in being tried by a juror feeling as you do?

Pornography

10. In this case, John Mullings is alleged to have received child pornography. At some point in this trial you may have to examine each individual image. Would any one of you, for whatever reason, not be able to examine each and every image?

11. Conversely, most pornography depicting nude adults is legal. However, does anyone believe, or feel, that all forms of pornography should be illegal?

Computers

12. During the trial, it is assumed that there will be discussion regarding the way in which computers store files and the mechanics of downloading images. While many

people have some working knowledge of how computers work, does anyone here not own or have access to a computer?

13. Does anyone here feel that testimony concerning computer terms would be too alien for you to understand?
14. Do any of you have specialized or advanced knowledge of computers beyond that of an average user?
15. Most of you have probably browsed the Internet at some time. This browsing, or surfing, can, at times, lead to unfortunate results. Have any of you experienced a virus attack on your computer?
16. How many of you have been frustrated by “cookies” or “pop-up ads” suddenly appearing on your screen?
17. Have any of you ever clicked on a website link and been transported to a website you had not intended to go to?
18. Who here has more than one computer in their house?
19. Who here has but one computer?
20. Who has shared a computer with others in their house, whether it was a family member or a roommate?
21. Have you monitored what these other persons do on this shared computer?
22. Have you had an occasion where you have found that someone who uses your computer has downloaded something you would not approve of?
23. Do you believe the owner of the computer should be responsible for what is downloaded by other persons?
24. Ever use a common computer in a library or a school?

Defendant Testimony

25. Mr. Mullings has already pled not guilty to this charge. How many of you feel you would like to hear his side of the story?

26. On a scale of 1-10, 10 being the strongest, how strongly do you feel about needing the defendant to testify?
27. Do you understand that the defendant does not have to testify at trial and nothing can be inferred from him not testifying?
28. In a criminal case, a defendant is not required to explain his or her side of the case since the burden of proof does, in fact, rest with the prosecution. Do you understand this and can you abide by this rule in deliberations and in reaching a verdict?
29. Is there anyone here who would expect to hear John Mullings testify before they would even consider a not guilty verdict?

Presumption of Innocence & Burden of Proof

30. (After reading the indictment to the jury panel) Do you understand that an indictment is only a piece of paper which notifies the defendant that he is being charged with a crime?
31. Do you understand that an indictment is not evidence that the crime charged was committed and may not be considered as evidence by you in deliberations?
32. Do you understand that the defendant entered a plea of not guilty and is innocent until proven otherwise?
33. Would any of you, if you had to decide this case right now, without hearing any evidence, find Mr. Mullings guilty? Why?
34. Does anyone believe that it is impossible for an innocent person to be charged with a crime?
35. Does anyone believe that the United States Government is always right?
36. Has anyone here ever been falsely accused of a crime? Please explain.
37. Do you have any difficulty presuming the defendant innocent now?
38. Do you understand that the government is required by law to prove the defendant guilty beyond a reasonable doubt?
39. Many people believe that the United States Government will not charge a citizen

unless they have a very strong case. How many of you feel that way? If so:

- (a) How strong is your opinion?
- (b) Why do you feel this way?

40. If the government fails to meet that burden, do you understand that you must find the defendant not guilty?

41. Do you realize that the burden of proof is greater for a criminal case than for a civil case?

Prior Experience with the Justice System

42. Have you, or any member of your family or friends, ever been employed by any court as a clerk, bailiff, reporter, or other officer? If so, please state what court, the dates of employment and the duties performed.

43. Have you ever received any legal training, including business law, or been employed by a law office? If so, please state the nature of such training or experience.

44. Do you know any judges, lawyers or prosecutors? If yes, who and how do you know them? Is there anything about your acquaintance with that person that would create any prejudice for or against any party in this case?

45. Members of the Department of Homeland Security, Springfield, Missouri, Police Department, Cassville, Missouri, Police Department, El Dorado Springs, Missouri, Police Department, Cedar County Missouri Sheriff's Department, Southwest Missouri Cyber Crimes Task Force, and other law enforcement agencies may testify in this case. Will you give more credit to the testimony of such a law enforcement officer than to any other witness, simply because he or she is a law enforcement officer?

46. Have you ever applied for a job with or worked for a law enforcement agency, or in the security field?

47. Have you previously served on a jury, civil or criminal? If so,

- (a) when?
- (b) what type of case?
- (c) what was the verdict?

48. Have any of you ever served on a federal grand jury? If so, when and where?
49. Have any of you, or members of your family or friends, ever been a party to or testified in a civil or criminal trial or before a grand jury? If so, please explain.
50. Have you, or a relative or close friend of yours, ever been a victim of any crime? If so, where, when, and what type of crime?
51. Would any experience you may have had sitting as a juror in a previous criminal case have any effect on your ability to sit as a fair and impartial juror in this case? If so, what effect would it have?
52. Was there anything about your previous jury experience that would lead you to feel that you have some prejudice either for the prosecution/defense or against the prosecution/defense? If so, what?
53. Have you ever appeared as a witness in a criminal prosecution? If yes, where and when?
54. Have you ever been a complainant for the prosecution in a criminal charge or trial? If so, please state where and when.

Pretrial Publicity

55. Have you read or heard anything about this case before coming here today? If so,
 - (a) What have you heard about John Mullings or any news reports concerning the alleged crime?
 - (b) Because of what you have read, heard, or observed in the news media regarding John Mullings or the alleged crime, would you require additional evidence of innocence to overcome the effect of any publicity you have encountered?
 - (c) Are you able, despite what you have read, heard, or observed in the news media about John Mullings still able to give to Mr. Mullings his entitled presumption of innocence?
 - (d) Do you honestly feel that you can lay aside any impression or opinion that you may have regarding Mr. Mullings and render a verdict based solely on the evidence presented in court?

Witnesses

56. The following persons may testify in this case. [Please read proposed witness lists filed by United States Attorney's Office.] Are any of you acquainted with any of these persons? If so, what is the nature of the acquaintance?

Legal Principles

57. Assuming that a loved one of yours was standing trial instead of Mr. Mullings for the same crime, would you feel satisfied with 12 jurors like you?

58. If you are chosen in this case, do you know of any reason why you could not sit as an impartial juror?

59. If you heard the evidence and you felt the defendant was probably guilty, that is, you were not convinced that he was or was not, but you thought the evidence showed that he probably was guilty, would you be able to return a verdict of not guilty since he had not been proven guilty beyond a reasonable doubt?

60. In a criminal case, the jury's decision to convict a defendant must be unanimous. That is, all 12 jurors must individually vote to convict a defendant. Is there any member of the jury panel who feels that requiring a unanimous verdict is unfair to the government or is otherwise unreasonable?

61. If you have reasonable doubt about the defendant's guilt and, after listening to the arguments of your fellow jurors when you retire to consider this case, you still have that reasonable doubt, would you stick to your opinion and refuse to change your verdict even though it was an unpopular one or might result in a mistrial?

62. Do any of you have any religious or faith based objection to sitting in judgment of another?

63. Do you know of any reason, whether asked before or not, which would prevent you from sitting as a juror in a fair and unbiased manner in the trial of this case, or is there any reason why it would be particularly embarrassing for you to sit as a juror in this trial? In other words, the defendant is entitled to a trial by an impartial jury composed of jurors who are without any biases or prejudices for or against the defendant and who are without any preconceived ideas about this case. If you were the defendant in this case, would you be satisfied with a person like yourself sitting on the jury?

64. Do any of you have any problems with hearing or eyesight or any other medical problem which would impair your full attention to this trial or your ability to sit in this courtroom during this trial?

Respectfully submitted,

/s/ Brady A. Musgrave

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Date: 04/25/2024

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of April 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which sent e-mail notification of such filing to all CM/ECF participants in this case, and a copy was mailed, via the United States Postal Service, to all non-CM/ECF participants.

/s/ Brady A. Musgrave

Brady A. Musgrave